

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-1

ADMINISTRATIVE PROCEDURES

Amended Regulation 1-1-6

CONCERNING THE ELEMENTS OF CERTIFICATION FOR CERTAIN FORMS AND CONTRACTS

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Section 1 Authority

This regulation is promulgated pursuant to §§ 10-1-109, 10-4-419, 10-4-633, 10-4-633.5, 10-15-105, 10-16-102(2), 10-16-107(2), 10-16-107.2, 10-16-107.3, and 10-16-119, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to promulgate rules applicable to the filing of new policy forms, new policy form listings, annual reports of policy forms, and certifications of policy forms.

Section 3 Applicability

This regulation applies to all insurers and other entities authorized to conduct business in Colorado which provide health coverages, private passenger automobile insurance, commercial automobile with an "individually-owned private passenger automobile-type endorsement", claims-made liability insurance, excess loss insurance used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act" (certification is only required with the filing and forms are attached versus a listing of forms) and/or preneed funeral contracts, who are required to fully execute and file, with each Listing of New Policy Forms or Annual Report of policy forms, a certification. This regulation does not change the certification requirements for preneed funeral contract sellers who utilize Colorado's prototype preneed funeral contracts.

If an "individually-owned private passenger automobile-type endorsement" is attached to a commercial automobile policy, the filing and certification requirements of Part 6 of Article 4, Title 10, C.R.S., apply to policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner, that are currently in use and issued or delivered, or intended to be used and issued or delivered, to any policyholder in Colorado and that are used or intended to be used with any commercial automobile insurance policy. If an "individually-owned motor vehicle endorsement" is attached to a commercial automobile policy, the insurer must comply with all of the private passenger automobile certification requirements.

Section 4 Definitions

For the purposes of this regulation:

- A. “Annual Report for private passenger automobile insurance” shall mean a list of all private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms and the readability score where required by law.
- B. “Annual Report for commercial automobile with individually-owned private passenger automobile-type endorsement” shall mean a list of all private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms.
- C. “Annual Report for claims-made liability insurance” shall mean a list of all claims-made liability insurance policy forms, endorsements, disclosure forms, and evidence of coverage currently in use and issued or delivered to any policyholder in Colorado, including the titles of the programs or products affected by the forms.
- D. “Annual Report for health coverage” shall mean a list of all policy forms, application forms (to include any health questionnaires used as part of the application process), endorsements and riders for any sickness, accident, and/or health insurance policy, contract, certificate, or other evidence of coverage currently in use and issued or delivered to any policyholder, certificate holder, enrollee, subscriber, or member in Colorado, including the titles of the programs or products affected by the forms and the readability score where required by law. This annual report shall include a certification that the rates and classification of risks or subscribers pertaining to the policies, endorsements, riders, or applications are on file with the Commissioner.
- E. “Annual Report for preneed contracts” shall mean a list of all written contracts, forms of assignment, agreements, or mutual understandings, any series or combination of contracts, agreements, or mutual agreements, or mutual understanding, or any security or other instrument which is convertible into a contract, agreement, or mutual understanding whereby it is agreed that, upon the death of the preneed contract beneficiary, a final resting place, merchandise, or service shall be provided or performed in connection with the final disposition of the preneed contract beneficiary's body currently in use.
- F. “Certification of compliance” shall mean a certification form, which contains elements of certification as determined by the Commissioner, signed by a designated officer of the entity. If the individual signing the certification is other than the president, vice president, assistant vice president, corporate secretary, assistant corporate secretary, CEO, CFO, general counsel or an actuary that is also a corporate officer, documentation should be included that shows that this individual has been appointed as an officer of the organization by the Board of Directors. This documentation is to be submitted with every filing.
- G. “Certification of compliance for excess loss insurance” used in conjunction with self-insured employer benefit plans under the federal “Employee Retirement Income Security Act” shall mean a certification form, which contains the elements of certification as determined by the Commissioner, signed by a designated officer of the entity. If the individual signing the certification is other than the president, vice president, corporate secretary, CEO, CFO, general counsel or an actuary that is also a corporate officer, documentation should be included that shows that this individual has been appointed as an officer of the organization by the Board of

Directors. This documentation is to be submitted with every filing. Entities shall file their actual forms with this certification.

- H. "Entity" shall mean any organization that provides private passenger automobile insurance, commercial automobile with an "individually-owned private passenger automobile-type endorsement", claims-made liability insurance, preneed funeral contracts, excess loss coverage used in conjunction with a self-insured benefit plan under the federal "Employee Retirement Income Security Act" or health coverage in this state. For the purpose of this regulation, "entity" includes insurers providing health coverage through fraternal benefit societies, health maintenance organizations, nonprofit hospital and health service corporations, sickness and accident insurance companies, and any other entities providing a plan of health insurance or health benefits subject to the Colorado insurance laws and regulations.
- I. "Health Coverage Compliance Guide" shall mean a form prescribed by the Commissioner, which provides guidance for certifying the compliance of any health coverage form with Colorado insurance laws and regulations.
- J. "Listing of New Policy Forms for private passenger automobile insurance" shall mean a list of any new private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner issued or delivered to any policyholder in Colorado with the description of the form, the unique form number for new policies and edition/edition date for amended forms, the title of the program or product affected by the form, the readability score where required by law, and the effective date the form will be used.
- K. "Listing of New Policy Forms for commercial automobile with individually-owned private passenger automobile-type endorsement" shall mean a list of any new private passenger automobile policy forms, endorsements, cancellation notices, renewal notices, disclosure forms, notices of proposed premium increases, notices of reductions in coverage and any other such forms as requested by the Commissioner issued or delivered to any policyholder in Colorado with the description of the form, the unique form number and edition date, the title of the program or product affected by the form, and the effective date the form will be used.
- L. "Listing of New Policy Forms for claims-made liability insurance" shall mean a list of any new claims-made liability insurance policy forms, endorsements, disclosure forms, and evidence of coverage issued or delivered to any policyholder in Colorado with the description of the form, the unique form number for new forms and edition/edition date for amended forms, the title of the program or product affected by the form, and the effective date the form will be used.
- M. "Listing of New Policy Forms for health coverage" shall mean a list of any new policy forms, application forms (to include any health questionnaires used as part of the application process), endorsements and riders for any sickness, accident, and/or health insurance policy, contract, certificate, or other evidence of coverage issued or delivered to any policyholder, certificate holder, enrollee, subscriber, or member in Colorado, with a description of the form, unique form number for new forms and edition/edition date for amended forms, the title of the program or product affected by the form, the readability score where required by law, and the effective date the form will be used.
- N. "Listing of New Policy Forms for preneed contracts" shall mean a list of all new written contracts, forms of assignment, agreements, or mutual understandings, any series or combination of contracts, agreements, or mutual agreements, or mutual understanding, or any security or other instrument which is convertible into a contract, agreement, or mutual understanding whereby it is agreed that, upon the death of the preneed contract beneficiary, a final resting place, merchandise, or service shall be provided or performed in connection with the final disposition of the preneed contract beneficiary's body. Additionally, the preneed funeral contract seller shall include a description of the form, the unique form number for new forms and edition/edition date

for amended forms, the title of the program or product affected by the form, and the effective date the form will be used. All preneed funeral contract sellers shall certify preneed contracts to the Commissioner concurrent with the use of such preneed contracts.

- O. "Officer of an entity" shall mean the president, vice-president, assistant vice-president, corporate secretary, assistant corporate secretary, funeral director, general counsel or actuary who is a corporate officer, or any officer appointed by the Board of Directors (a copy of the appointment is required for each filing).
- P. "Program" shall mean the title of an entity's insurance program, product or preneed funeral contract.
- Q. "Signature" includes an electronic signature as defined in § 24-71.3-102, C.R.S.

Section 5 Rules

- A. At least 31 days prior to using any new form (except preneed funeral contract and excess loss insurance used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act" forms, which are filed concurrently) each entity, subject to the provisions of this regulation, shall file, in a format prescribed by the Commissioner, a Listing of New Policy Forms including a fully-executed certificate of compliance. Any such listing and the applicable certificate of compliance must be prepared individually for each product.
- B. Not later than July 1 of each year, each private passenger automobile insurer, commercial automobile with an "individually-owned private passenger automobile-type endorsement" which is attached to a commercial automobile policy, preneed contract and claims-made liability insurer shall file an Annual Report of policy forms including a fully-executed certificate of compliance.
- C. Not later than December 31 of each year, each entity providing health care coverages shall file an Annual Report of policy forms including a fully executed certificate of compliance. However, excess loss insurance, used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act", does not require the filing of an Annual Report of policy forms.

D. Elements of Certification

The elements of certification as determined by the Commissioner, which must be included in the Colorado Health Coverage Certification Forms, the Colorado Automobile Private Passenger Insurance Certification Form, Colorado Preneed Certification Form (prototype policies are excluded from this certification process), the Colorado Commercial Automobile with Individually-Owned Private Passenger Automobile-Type Insurance Certification Form, Excess Loss Insurance used in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act" Certification Form, and the Colorado Claims-Made Liability Insurance Certification Form are as follows:

- 1. The name of the entity;
- 2. A statement that the officer signing the certification form is knowledgeable of accident and health insurance or health care benefits, preneed funeral contracts, private passenger automobile insurance, excess loss insurance used in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act", or "individually-owned private passenger automobile-type endorsement" attached to a commercial automobile policy or claims-made liability insurance, whichever is being certified;

3. A statement that the officer signing the certification form has carefully reviewed the policy forms, subscription certificates, membership certificates, preneed funeral contracts or other evidences of health care coverage identified on the Listing of New Policy Forms or Annual Report, or in the case of Excess Loss Insurance used in Conjunction with Self-Insured Employer Benefit Plans under the Federal "Employee Retirement Income Security Act", the actual forms are attached;
4. A statement that the officer signing the certification form has read and understands each applicable law, regulation and bulletin;
5. A statement that the officer signing the certification form is aware of applicable penalties for certification of a noncomplying form or contract;
6. A statement that the officer signing the certification form certifies:
 - a. For Listings of New Policy Forms for health coverage or, in the case of excess loss insurance in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act", the actual forms themselves, that the certifying officer has reviewed, signed and placed on file the health coverage compliance guide or, in the case of excess loss insurance in conjunction with self-insured employer benefit plans under the federal "Employee Retirement Income Security Act", the excess loss for ERISA plan guide, and to the best of the officer's good faith, knowledge and belief, the documents identified on the listing of new policy forms provide all applicable mandated coverages and are in full compliance with all Colorado insurance laws and regulations;
 - b. For Annual Reports of health coverage, that the documents identified on the listing provide all applicable mandated coverages and are in full compliance with all Colorado insurance laws and regulations;
 - c. For Listings of New Policy Forms and Annual Reports for private passenger automobile insurance and "individually-owned private passenger automobile-type endorsement" attached to a commercial automobile policy, that to the best of the officer's knowledge, the documents identified on the Listing of New Policy Forms or Annual Report provide all applicable mandated coverages and that such forms are in full compliance with all Colorado insurance laws and regulations;
 - d. For Listings of New Policy Forms and Annual Reports for claims-made liability insurance, the certification must include a statement that the policy forms identified on the Listing of New Policy Forms or Annual Report provide all applicable mandated coverages and that such forms are in full compliance with Colorado insurance laws and regulations; or
 - e. For Listings of New Contract Forms and Annual Reports for preneed funeral contracts (prototype contracts are excluded from this requirement), the contract seller must certify that, to the best of the seller's knowledge, each preneed funeral contract or form of assignment are in full compliance with all Colorado insurance laws and regulations;
7. The name and title of the officer signing the certification form and the date the certification form is signed;

8. The original signature of the officer. Signature stamps, photocopies or a signature on behalf of the officer are not acceptable. Electronic signatures must be in compliance with § 24-71.3-102, C.R.S. and applicable regulations.
 9. Annual Reports for health coverage shall contain a statement in the form certification that states: "Copies of the rates and the classification of risks or subscribers pertaining to these policies, endorsements, riders, or application are on file with the Commissioner."
- E. If an insurer or carrier uses the optional method of electronic dissemination of newly issued or renewed policy forms or endorsements, the insurer or carrier must comply with Colorado's Uniform Electronic Transaction Act (UETA) § 24-71.3-101 et seq., C.R.S. UETA guidance is provided by the Colorado Office of Information Technology and the Colorado Division of Insurance.
 - F. All filings submitted in the format prescribed by the Commissioner, System for Electronic Rate and Form Filings (SERFF), shall have the Form Schedule Tab completed with the form name, form number, edition date, form type, action, action specific data, and readability score.

Section 6 Readability

- A. Effective January 1, 2012, insurers and carriers writing automobile insurance policies, health benefit plans, limited benefit health insurance, dental plans, or long-term care plans, must include the Flesch-Kincaid grade level or the Flesch Read Ease score in the electronic filing. The Flesch-Kincaid grade level shall not exceed the tenth grade level or the Flesch Read Ease score shall not be less than 50.
- B. Insurers and carriers may choose either the Flesch-Kincaid grade level formula or the Flesch Read Ease formula to generate a readability score. However, once a formula has been selected from these two formulas, the selected formula shall be used consistently for all text being scored for that particular policy.
- C. At the option of the insurers and carriers, riders, endorsements, applications, and other forms made a part of the policy may be scored as a separate form or as part of the policy with which they may be used.
- D. For the purposes of the readability score, only forms that are made part of the policy are required to comply with the readability score. Cancellation notices, renewal notices, disclosure forms, and notices of reductions in coverage do not require a readability score.
- E. Readability scores are not required for commercial automobile insurance coverage.

Section 7 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 8 Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of license. Among others, the penalties provided for in §10-3-1108, C.R.S. may be applied.

Section 9 Effective Date

This regulation shall become effective on January 1, 2012.

Section 10 History

Originally issued as Emergency Regulation 92-1, effective July 22, 1992.

Final Regulation 1-1-6 effective June 1, 1994.

Amended Regulation 1-1-6 effective February 1, 2002.

Amended Regulation 1-1-6 effective June 1, 2003.

Sections 1, 2, 3, 8 and 9 amended effective February 1, 2004.

Amended Regulation effective January 1, 2012.